2026:CGHC:2952-DB

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPC No. 231 of 2026

M/s Hydro Pneumatic Engineers (Hyd) Pvt. Ltd. Rep. By Its Authorized Signatory Yogesh Kumar Sahu, S/o. Shri Bhagwan Prasad Sahu, Aged About 37 Years, Office Of C/o L.S. Rao, House No. 18, State Bank Colony, Near Lal Bag Ground, Jagdalpur, District Bastar C.G.

... Petitioner

versus

1 - The union of india through ministry of defence (DRDO) govt. of india, through its chairman, drdo bhawan, drdo hqrs, rajaji marg, new delhi.

2 - Advanced Systems Laboratory, Ministry of Defence (DRDO), Govt. of India, Rep.By Director, Kanchanbagh, Hyderabad

3 - SF Complex, Through General Manager Airport Terminal Building, Jagdalpur, Drdo, Rep. By General Manager, Government of India, Ministry of Defence, Airport Terminal Building, Jagdalpur, District Bastar C.G.

4 - M/s Prenita Constructions, Through Its Proprietor, Opp. Ashok Gondis Residence, Vrindavan Colony, Jagdalpur C.G.

... Respondents

For Petitioner	:	Mr. Goutam Khetrapal, Advocate
For Respondent/UOI	:	Mr. Ramakant Mishra, Dy. Solicitor General along with Ms. Shweta Rai, CGC
For Respondent No.4	:	Mr. Anurag Tripathi, Advocate

Hon'ble Mr. Ramesh Sinha, Chief Justice
Hon'ble Mr. Ravindra Kumar Agrawal, Judge

Order on Board

Per Ramesh Sinha, Chief Justice

19.01.2026

1. Heard Mr. Goutam Khetrapal, learned counsel for the petitioner.

Also heard Mr. Ramakant Mishra, learned Deputy Solicitor General along with Ms. Shweta Rai, learned Central Government Counsel, appearing for respondent/UOI and Mr. Anurag Tripathi, learned counsel, appearing for respondent No.4.

2. The present petition has been filed by the petitioners under Article 226 of the Constitution of India, with the following prayers :-

> *"10.1 Quash the cancellation of tender pursuant to NIT dated 14.02.2025, quash the subsequent NIT dated 21.08.2025 as arbitrary and illegal and direct the respondents to issue work order to the petitioner pursuant to the original NIT, being the declared L-1 bidder; or,*
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> *10.2. Direct the respondents to pass a reasoned and speaking order on the petitioner's representations within a fixed time frame.*
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> *10.3. Pass any other order(s) deemed fit in the interest of justice."*

3. Mr. Goutam Khetrapal, learned counsel for the petitioner submitted that the respondent authorities, through the Ministry of Defence, Department of Defence Research & Development (DRDO), issued a Notice Inviting Tender (NIT) on the Government e-Marketplace (GeM) Portal, bearing Bid No. GEM/2025/B/5871105 dated 14.02.2025, for awarding a Service Contract for Operation and Maintenance of Propellant Plant at SFC, Jagdalpur, for a period of four (04) years, under the Ministry of Defence. The petitioner along with other bidders have participated in the said tender proceedings. The bids were opened and evaluated in accordance with the procedure set out in the NIT, including technical evaluation followed by financial

evaluation. As per the Financial Evaluation, the petitioner i.e. Hydro Pneumatic Engineers (Hyd) Pvt. Ltd., was declared the Lowest Bidder (L-1) with a total bid of Rs. 57,24,61,693/-, whereas the next lowest bidder i.e. Respondent no. 4 herein, quoted Rs. 62,17,40,700.27/-. He further submitted that after declaration of L-1, the petitioner was called for negotiation by the respondent authority on 11.06.2025, and a CNC meeting was conducted on 17.06.2025. During negotiations, the petitioner agreed and undertook to execute the entire work at 7% below the departmental estimate, and the petitioner submitted its Revised Best and Final Offer (BAFO) on 24.07.2025, reducing its total bid to Rs 54,89,42,601/- including GST for the total four-year contract period, in compliance with the CNC meeting directives and an acceptance letter dated 24.07.2025 was issued/recorded.

4. Mr. Khetrapal contended that despite the petitioner being the Lowest Bidder (L-1) and having submitted the BAFO, the respondents have failed and neglected to issue the Letter of Acceptance /Work Order in favour of the petitioner and to the utter shock of the petitioner, the respondents cancelled the tender between 15.08.2025 and 20.08.2025, without assigning any reason, as reflected the GeM on portal. The petitioner immediately submitted representations dated 20.08.2025 to the General Manger DRDO and Director General (MSS), Office of DG (MSS), Hyderabad pointing out that cancellation after opening of financial bid and CNC meeting is illegal and arbitrary and while the

petitioner was assured that its grievance would be considered, the respondents, in blatant disregard of such assurance, re-floated the same tender on 21.08.2025 with Bid No. GEM/2025/B/6546371, with only superficial changes in terms and conditions, no material change in scope of work, eligibility criteria or technical specifications was introduced, clearly indicating arbitrariness in the earlier cancellation.

5. Mr. Khetrapal vehemently argued that the action of the respondent authorities in cancelling the tender and re-floating the same is arbitrary, unreasonable and violative of Article 14 of the Constitution of India. It is contended that the petitioner, having been declared the Lowest Bidder (L-1) after due technical and financial evaluation and having further reduced its bid pursuant to negotiations and the CNC meeting by submitting its Best and Final Offer, acquired a legitimate expectation for issuance of the Letter of Acceptance. The abrupt cancellation of the tender after completion of the entire bidding process and negotiations, without assigning any reason, is wholly illegal and unsustainable in law. It is further submitted that the subsequent re-tendering of the very same work within a short span, without any material change in scope, eligibility criteria or technical specifications, clearly establishes arbitrariness and mala fide intent on the part of the respondents. Such action defeats transparency, fairness and public interest, especially when the petitioner’s offer was substantially lower, causing financial loss to the public exchequer.

Therefore, he prays that the writ petition be allowed, the impugned cancellation of the tender be quashed, and the respondents be directed to issue the Letter of Acceptance/Work Order in favour of the petitioner. He also pointed out that the petitioner was earlier awarded a similar contract in the year 2021-22 for Propellant Processing & Testing Services at SF Complex, DRDO, Jagdalpur for the period 36 months, which has since been extended multiple times and the petitioner is still doing the said work.

6. On the other hand, Mr. Ramakant Mishra, learned Deputy Solicitor General, appearing for the respondent / UOI opposed the aforesaid submission and submitted that the petitioner has participated in the first tender floated on 14.02.2025 and despite being L-1 in the first tender and negotiation price was given to the petitioner, which has been cancelled on the ground that some clauses such as expenses of operation manager and provision of revision in the conveyance/ transportation price was missing in the RFP, the petitioner, without challenging the cancellation of the first tender, has participated in the subsequent tender floated on 21.08.2025 and when he was not succeeded in the same, now he is challenging the first tender on the ground that arbitrariness, which is not permissible in the eyes of law.

7. We have heard learned counsel for the parties and perused the impugned orders and the material available on record.

8. The law with respect to interference in tender matters is limited to certain extent as has been considered by the Hon'ble Supreme

Court in large number of cases including in the case of ***Tata Motors Limited vs Brihan Mumbai Electric Supply & Transport Undertaking (BEST) and others***[1] wherein the Hon'ble Supreme Court has considered the factum of interference in the tender matters and has held as under:

> *"48. This Court being the guardian of fundamental rights is duty-bound to interfere when there is arbitrariness, irrationality, mala fides and bias. However, this Court has cautioned time and again that courts should exercise a lot of restraint while exercising their powers of judicial review in contractual or commercial matters. This Court is normally loathe to interfere in contractual matters unless a clear-cut case of arbitrariness or mala fides or bias or irrationality is made out. One must remember that today many public sector undertakings compete with the private industry. The contracts entered into between private parties are not subject to scrutiny under writ jurisdiction. No doubt, the bodies which are State within the meaning of Article 12 of the Constitution are bound to act fairly and are amenable to the writ jurisdiction of superior courts but this discretionary power must be exercised with a great deal of restraint and caution. The courts must realise their limitations and the havoc which needless interference in commercial matters can cause. In contracts involving technical issues the courts should be even more reluctant because most of us in Judges' robes do not have the necessary expertise to adjudicate upon technical issues beyond our domain. The courts should not use a magnifying glass while scanning the tenders and make every small mistake appear like a big blunder. In fact, the courts must give "fair play in the joints" to the government and ublic sector undertakings in matters of contract. Courts must also not interfere where such interference will cause unnecessary loss to the public exchequer."*

1 2023 SCC OnLine SC 671

9. Recently, the Hon'ble Supreme Court, in the matter of ***Banshidhar Construction Pvt. Ltd. v. Bharat Coking Coal Ltd. & Others**,* {Civil Appeal No. 11005 OF 2024, decided on 04.10.2024}, taking note of the decisions rendered in various other celebrated judgments, observed as under:

> *"21. There cannot be any disagreement to the legal proposition propounded in catena of decisions of this Court relied upon by the learned counsels for the Respondents to the effect that the Court does not sit as a Court of Appeal in the matter of award of contracts and it merely reviews the manner in which the decision was made; and that the Government and its instrumentalities must have a freedom of entering into the contracts. However, it is equally well settled that the decision of the government/ its instrumentalities must be free from arbitrariness and must not be affected by any bias or actuated by malafides. Government bodies being public authorities are expected to uphold fairness, equality and public interest even while dealing with contractual matters. Right to equality under Article 14 abhors arbitrariness. Public authorities have to ensure that no bias, favouritism or arbitrariness are shown during the bidding process and that the entire bidding process is carried out in absolutely transparent manner.*
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> *10. 22. At this juncture, we may reiterate the well-established tenets of law pertaining to the scope of judicial intervention in Government Contracts.*
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> *23. In **Sterling Computers Limited vs. M/s. M & N Publications Limited and Others**[2], this Court while dealing with the scope of judicial review of award of contracts held: -*
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> > *"18. While exercising the power of judicial review, in respect of contracts entered into on behalf of the State, the Court is concerned primarily as to whether there has been any infirmity in the "decision making process". In this connection reference may be made to the case of Chief Constable of the North Wales*

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2 (1993) 1 SCC 445

Police v. Evans [(1982) 3 All ER 141] where it was said that: (p. 144a)

> *"The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches on a matter which it is authorised or enjoined by law to decide for itself a conclusion which is correct in the eyes of the court."*

By way of judicial review the court cannot examine the details of the terms of the contract which have been entered into by the public bodies or the State. Courts have inherent limitations on the scope of any such enquiry. But at the same time as was said by the House of Lords in the aforesaid case, Chief Constable of the North Wales Police v. Evans [(1982) 3 All ER 141] the courts can certainly examine whether "decision-making process" was reasonable, rational, not arbitrary and violative of Article 14 of the Constitution."

24. In ***Tata Cellular vs. Union of India***[3]*, this Court had laid down certain priniciples for the judicial review of administrative action.*

"94. The principles deducible from the above are:

(1) The modern trend points to judicial restraint in administrative action.

(2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.

(3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.

(4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.

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3 (1994) 6 SCC 651

(5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.

(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure. Based on these principles we will examine the facts of this case since they commend to us as the correct principles."

*25. It has also been held in **ABL International Limited and Another vs. Export Credit Guarantee Corporation of India Limited and Others**[4], as under: -*

"53. From the above, it is clear that when an instrumentality of the State acts contrary to public good and public interest, unfairly, unjustly and unreasonably, in its contractual, constitutional or statutory obligations, it really acts contrary to the constitutional guarantee found in Article 14 of the Constitution."

*26. In **Jagdish Mandal vs. State of Orissa and Others**[5], this Court after discussing number of judgments laid down two tests to determine the extent of judicial interference in tender matters. They are: -*

"22. (i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone; or Whether the process adopted or decision made is so arbitrary and irrational that the court can say: "the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached;"

(ii) Whether public interest is affected. If the answers are in the negative, there should be no interference under Article 226. Cases involving blacklisting or imposition of penal consequences on a

4 (2004) 3 SCC 553

5 (2007) 14 SCC 517

tenderer/contractor or distribution of State largesse (allotment of sites/shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action."

*27. In **Mihan India Ltd. vs. GMR Airports Ltd. and Others**[6], while observing that the government contracts granted by the government bodies must uphold fairness, equality and rule of law while dealing with the contractual matters, it was observed in Para 50 as under: -*

> *"50. In view of the above, it is apparent that in government contracts, if granted by the government bodies, it is expected to uphold fairness, equality and rule of law while dealing with contractual matters. Right to equality under Article 14 of the Constitution of India abhors arbitrariness. The transparent bidding process is favoured by the Court to ensure that constitutional requirements are satisfied. It is said that the constitutional guarantee as provided under Article 14 of the Constitution of India demands the State to act in a fair and reasonable manner unless public interest demands otherwise. It is expedient that the degree of compromise of any private legitimate interest must correspond proportionately to the public interest."*

*28. It was sought to be submitted by the learned Counsels for the Respondents relying upon the observations made in **Central Coalfields Limited and Another vs. SLL-SML (Joint Venture Consortium) and Others**[7], that whether a term of NIT is essential or not is a decision taken by the employer which should be respected. However, in the said judgment also it is observed that if the employer has exercised the inherent authority to deviate from the essential term, such deviation has to be made applicable to all the bidders and potential bidders. It was observed in Para 47 and 48 as under:-*

> *"47. The result of this discussion is that the issue of the acceptance or rejection of a bid or a bidder should be looked at not only from the point of view of the unsuccessful party but alsofrom the point of view*

6 (2022) SCC OnLine SC 574

7 (2016) 8 SCC 622

of the employer. As held in Ramana Dayaram Shetty [Ramana Dayaram Shetty v. International Airport Authority of India, (1979) 3 SCC 489] the terms of NIT cannot be ignored as being redundant or superfluous. They must be given a meaning and the necessary significance. As pointed out in Tata Cellular [Tata Cellular v. Union of India, (1994) 6 SCC 651] there must be judicial restraint in interfering with administrative action. Ordinarily, the soundness of the decision taken by the employer ought not to be questioned but the decision-making process can certainly be subject to judicial review. The soundness of the decision may be questioned if it is irrational or mala fide or intended to favour someone or a decision "that no responsible authority acting reasonably and in accordance with relevant law could have reached" as held in Jagdish Mandal [Jagdish Mandal v. State of Orissa, (2007) 14 SCC 517] followed in Michigan Rubber [Michigan Rubber (India) Ltd. v. State of Karnataka, (2012) 8 SCC 216].

48. Therefore, whether a term of NIT is essential or not is a decision taken by the employer which should be respected. Even if the term is essential, the employer has the inherent authority to deviate from it provided the deviation is made applicable to all bidders and potential bidders as held in Ramana Dayaram Shetty [Ramana Dayaram Shetty v.International Airport Authority of India, (1979) 3 SCC 489] . However, if the term is held by the employer to be ancillary or subsidiary, even thatdecision should be respected. The lawfulness of that decision can be questioned on very limited grounds, as mentioned in the various decisions discussed above, but the soundness of the decision cannot be questioned, otherwise this Court would be taking over the function of the tender issuing authority, which it cannot."

11. After hearing the learned counsel for both parties and upon perusal of the records, this Court finds that the petitioner's challenge to the cancellation of the tender and re-tendering of the

same lacks merit. It is settled law that the process of tendering is not bound by any statutory or contractual obligation to award the contract merely because a bidder is declared the lowest (L-1). The respondents, in this case, exercised their discretion to cancel the initial tender due to certain missing clauses in the Request for Proposal (RFP), including issues related to the expenses of the operation manager and transportation price revision. These deficiencies in the initial tender document were substantial enough to justify cancellation.

12. The petitioner, despite being aware of the cancellation, chose to participate in the subsequent re-tender without challenging the cancellation at that time. The petitioner's participation in the re-tender process clearly indicates acquiescence to the respondents' action, and the challenge to the earlier tender process cannot now be raised on grounds of arbitrariness after having participated in the second round of bidding. Furthermore, the fact that the re-tender involved minimal changes to the terms and conditions does not, in itself, indicate any arbitrariness or mala fide intention on the part of the respondents. The respondents have sufficient discretion under the rules to cancel and re-float tenders if they deem it necessary to ensure fairness, transparency, and compliance with the procurement guidelines.

13. The petitioner's expectation of a work order following the negotiation process was not a guarantee of contract award, and no concluded contract came into existence as no formal Letter of

Acceptance (LoA) was issued. Moreover, the petitioner has not demonstrated any malafide intention or lack of transparency in the respondents' decision-making process.

14. Therefore, in light of the above facts and legal principles, the writ petition is devoid of merit and is accordingly **dismissed**. The cancellation of the tender and the subsequent re-tendering process are found to be within the permissible discretion of the respondents and do not warrant judicial intervention.

Sd/-
(Ravindra Kumar Agrawal)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice

Chandra